



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Health TITLE-SERIES: 64-42
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 64-42 Childhood Lead Screening

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 16-1-4 and 16-35-4a

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The secretary may propose rules in accordance with the provisions of 29A-3-1 et seq. of this code that are necessary and proper to effectuate the purposes of this chapter. The director shall, after consultation with recognized professional medical groups and such other sources as he deems appropriate, propose legislative rules establishing: (1) The means by which and the intervals at which children under six years of age shall be screened for lead poisoning; and (2) guidelines for the medical follow-up of children found to be lead poisoned.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/29/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/29/2021

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

n/a

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule establishes and implements a statewide childhood lead poisoning screening and identification program.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The rule has been updated to conform to newer blood lead levels from the CDC that indicate lead poisoning in children.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			0
Personal Services			0
Current Expenses			0
Repairs and Alterations			0
Assets			0
Other			0
2. Estimated Total Revenues			0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 64
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH

SERIES 42
CHILDHOOD LEAD SCREENING

§64-42-1. General.

1.1. Scope. -- This rule establishes and implements a statewide childhood lead poisoning screening and identification program. ~~This rule should be read in conjunction with W. Va. Code §16-35-4a, 35, 16-1-17 and 18. The W. Va. Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us/>.~~

1.2. Authority. -- W. Va. Code §16-1-4 and §16-35-4a.

1.3. Filing Date. -- ~~April 29, 2004.~~

1.4. Effective Date. -- ~~April 29, 2004.~~

1.5. Sunset. -- This rule shall terminate and have no further force or effect on August 1, 2027.

§64-42-2. Application and Enforcement.

2.1. This rule applies to all physicians, hospitals, health care facilities, and health care providers who conduct or oversee medical examinations of children under the age of six years.

2.2. Enforcement -- This rule is enforced by the Commissioner of the Bureau for Public Health.

§64-42-3. Definitions.

3.1. Bureau. -- The West Virginia Bureau for Public Health.

3.2. Commissioner. -- The Commissioner of the Bureau for Public Health.

3.3. Elevated Blood Lead Level. -- A concentration of lead in the blood stream as defined in the current reference manual provided by the United States Centers for Disease Control and Prevention (CDC), ~~"Managing Elevated Blood Lead Levels Among Young Children: Recommendations from the Advisory Committee on Childhood Lead Poisoning Prevention," 2002.~~

3.4. Health Care Provider. -- A physician, or his or her designee, at any medical facility, including but not limited to, private clinics, health departments, and hospitals.

3.5. Laboratory. -- A facility or place, however, named, for the biological, microbiological, serological, chemical, immuno-hematological, hematological, biophysical, ~~erytological~~ cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of human beings and is participating in the ~~United States Centers for Disease Control and Prevention~~ CDC blood lead laboratory proficiency program.

3.6. Screening. -- The assessment of a child's environment and social conditions to determine risk for lead poisoning.

3.7. Screening test. -- A procedure using a blood sample to detect lead poisoning levels.

§64-42-4. Protocol for Screening of Children.

4.1. West Virginia health care providers shall, ~~to the greatest extent possible, screen~~ conduct a screening test on all children before the age of six years for risk of elevated blood lead levels in accordance with the ~~United States Centers for Disease Control and Prevention reference, "Screening Young Children for Lead Poisoning: Guidance for State and Local Officials," November, 1997 CDC recommendations.~~

4.1.a. All children shall ~~be screened using a risk assessment~~ receive a screening test at one year and again at two years of age, and children 36 to 72 months of age if they have not been screened previously; and

4.1.b. The ~~risk assessment~~ screening tests shall be recorded in each child's medical record at the ~~physician's health care provider's office.~~ The Office of Maternal, Child and Family Health shall ensure laboratory results received are incorporated in the Immunization Registry within the Lead Module provided by the Bureau for Public Health for health care provider reference. This information shall include the date of screening test, the child's address, the location where the screening test was conducted, which screening test was used, and the physician's name.

~~4.1.c. If a child is determined to be at risk for lead poisoning, the health care provider shall perform or authorize a blood test to identify the blood lead level.~~

4.2. The protocol for confirmation of elevated blood lead levels shall be in accordance with the ~~United States Centers for Disease Control and Prevention reference, "Managing Elevated Blood Lead Levels Among Young Children: Recommendations from the Advisory Committee on Childhood Lead Poisoning Prevention," March 2002 CDC recommendations.~~

§64-42-5. Follow-up Testing and Information.

5.1. In addition to the follow-up testing prescribed in W. Va. Code §16-35-4a, when a child's results are confirmed as an elevated blood lead level, the Bureau for Public Health shall advise pregnant women residing at the same address of the need to be tested as soon as possible.

5.2. The health care provider shall provide all information concerning a child's blood-lead level to the legal parent or guardian and other agencies involved in lead poisoning testing.

5.3. The Bureau shall refer children with elevated blood-lead levels to the following services:

5.3.a. Children with confirmed blood lead levels of greater than or equal to ~~10~~ five micrograms per deciliter shall be referred to ~~Children's Specialty Care, a program~~ appropriate programs based on age and concern offered by the Office of Maternal, Child and Family Health in the Bureau, within 10 days of confirmation;

5.3.b. Children with two consecutive blood lead levels of greater than or equal to ~~15~~ eight

micrograms per deciliter, ~~and children with blood lead levels of greater than or equal to 20 micrograms per deciliter shall be referred to environmental assessments and nurse home visits within two days of confirmation; and~~

5.3.c. All children with elevated blood lead levels of greater than or equal to ~~10~~ five micrograms per deciliter shall have a follow-up blood lead level screening ~~every three months~~ test per the guidance set forth by the American Academy of Pediatrics and the CDC.

§64-42-6. Reporting Requirements.

6.1. The Bureau shall review this program at least every three years and make available to all interested parties a summary of the quarterly testing results, beginning in July of the effective year of this rule.

§64-42-7. Samples Submitted to a Laboratory.

7.1. The health care provider shall submit all blood samples to a laboratory for analysis. Capillary blood samples may be analyzed using an approved Clinical Laboratory Improvement Amendments waived lead testing point of care system.

7.2. When submitting blood samples, the health care provider shall include a laboratory requisition obtained from the Bureau that contains the child's name, address, the county of residence, the name and address of the physician who completed the screening test, and other information requested on the form.

7.3. Laboratories processing blood lead samples for analysis shall electronically submit all required data to the ~~Bureau~~ Office of Maternal, Child and Family Health within seven working days of analysis, or sooner if available.

§64-42-8. Confidentiality.

8.1. Records received and information assembled by the Bureau are confidential medical records and shall not be disclosed except as permitted by law.

8.2. Reports published using statistical compilations relating to childhood lead poisoning may not in any manner identify individual patients, individual addresses, or individual enforcement action, or be reported for such small geographic areas or other categories with few entries that a person could, with other publicly available information, reasonably be able to identify the patients.

§64-42-9. Enforcement Action.

9.1. The Commissioner may investigate all suspected violations of this rule or of W. Va. Code §§16-35-1 *et seq.*, and upon the finding of a violation in connection with this rule, the Commissioner shall initiate appropriate enforcement action.

§64-42-10. Penalties.

10.1. Any person who violates the provisions of W. Va. Code §16-35-4a or this rule is subject to the penalties provided in W. Va. Code §16-1-17 and §16-35-13.

§64-42-11. Administrative Due Process.

11.1. Those individuals adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests, or privileges shall do so in a manner prescribed in the division of health, Rules and Procedures for Contested Case Hearing and Declaratory Ruling, 64CSR1.